Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51

COMMENTS OF LOGICAL TELECOM, L.P.

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SUMMARY OF COMMENTS OF LOGICAL

Logical Telecom, L.P. ("Logical") strongly opposes both the elimination of the limited international revenues exemption ("LIRE") from Universal Service Fund ("USF") contributions, and the exemption for international-only service providers. As shown below, 47 U.S.C. § 254(d) clearly limits the USF contribution to interstate service providers, therefore international-only service providers must be exempt. This plain-language reading is supported by controlling judicial interpretation, legislative history, and even the Federal Communications Commission's ("FCC's") own rulings.

The FCC is prohibited from eliminating the LIRE, because to do so would be discriminatory under Section 254(d) to interstate service providers with mostly-international service revenues, as compared to international-only service providers. Elimination of the LIRE would also be contrary to Fifth Circuit precedent. Both international exemptions are necessary for regulatory predictability as required by Section 254(b), to avoid both disrupting pro-consumer markets and rate shock to customers.

Logical agrees with the FCC that USF contribution rules should be modified to clarify their applicability to prepaid calling card providers ("PCCPs"). Specifically, the FCC should clarify that PCCPs should be assessed contributions on the amount actually collected by them from the entity to which the PCCP directly sells the prepaid card. This solution is easy to administer, and avoids the discrimination to PCCPs created by the current method of reporting the "face value" of calling cards. Logical opposes the adoption of a "value added" approach for assessing PCCP revenues, because that method would be unduly complicated for current providers and administrators. Logical also opposes any mark up on the revenue actually collected by the PCCPs. Should the FCC adopt such a mark up, Logical maintains that a "safe harbor" mark up of more than 35% would not be consistent with marketplace reality.

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COMMENTS OF LOGICAL TELECOM, L.P.

Logical Telecom, L.P. ("Logical" or "the Company"), by its undersigned attorneys, respectfully submits the following comments in response to the Federal Communications Commission's ("FCC's" or "Commission's") *Further Notice of Proposed Rulemaking* ("*FNPRM*") released on April 30, 2012 in the above-captioned proceeding.[1]

Logical[2] strongly opposes the elimination of the exemptions from Universal Service Fund ("USF" or "Fund") contributions for service providers qualifying for the limited international revenues exemption ("LIRE") or for international-only service providers. As explained below, the Commission clearly lacks the legal authority to do so in either case. Furthermore, preserving the exemptions would avoid market-distorting regulatory instability and rate increases to the very customers the Fund is intended to protect.

Logical agrees with the Commission that the USF contribution rules should be modified to provide clarity to prepaid calling card providers ("PCCPs"). Specifically, the FCC should 1)

[1] *In the Matter of Universal Service Contribution Methodology, A National Broadband Plan For Our Future*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122, GN Docket No. 09-51, 77 FR 33896 (FCC 12-46) (rel. Apr. 30, 2012) ("*FNPRM*").

[2] A provider of international and interstate prepaid communications services, Logical has been a USF contributor since 2006. Like many other PCCPs, the Company sometimes sells its prepaid calling services directly to customers, and in other cases, sells services at a discount to distributors which, in turn, ultimately sell to retail stores.

clarify that PCCPs should be assessed contributions on the amount actually collected by them from end users, not based on the face-value of the calling card; 2) not adopt a confusing and burdensome "value added" approach for assessing prepaid calling card contributions; and 3) not institute a "safe harbor" mark up of higher than 35%, if the FCC chooses to create a "safe harbor" mark up.

I. THE COMMISSION LACKS LEGAL AUTHORITY TO ELIMINATE THE INTERNATIONAL-ONLY EXEMPTION OR THE LIRE, AND TO DO SO WOULD BE CONTRARY TO USF GOALS

As shown below, the Commission does not have legal authority to eliminate the exemption applicable to international-only service providers nor the limited international revenues exemption or LIRE. Furthermore, the elimination of either of these important and well-established exemptions would run counter to Section 254(b)'s requirement that Federal USF mechanisms be predictable, resulting in market-disrupting regulatory instability.

A. The Commission Lacks Authority to Extend the USF Contribution Requirement to International-Only Service Providers

The Commission clearly has no legal authority to extend the USF contribution requirement to international-only service providers. First, the plain language of the Communications Act of 1934, as amended ("Act"), limits the contribution requirement to interstate providers. 47 U.S.C. § 254(d) specifically provides that "[e]very telecommunications carrier that provides *interstate* telecommunications services shall contribute" to the USF.[3] Such

[3] 47 U.S.C. § 254(d) (emphasis added). "Interstate telecommunications" and "foreign communications" are both defined at 47 U.S.C. § 153, suggesting that the use of "interstate" was an intentional distinction by Congress. *Compare* 47 U.S.C. § 153(28) *with id. at* § 153(22) (defining "foreign telecommunications" as "communication or transmission from or to any place in the United States to or from a foreign country, or between a station in the United States and a mobile station located outside the United States"). The Commission itself references these

clear and unambiguous language in a statute must be given effect by an agency that implements the statute. [4] International-only service providers do not provide interstate telecommunications services, therefore they must be exempted from USF contribution by the clear and unambiguous language of the statute.

Second, fifteen years of interpretation of the contribution requirement by the Courts, Congress, and even the Commission itself evidence that a plain reading of Section 254(d) – requiring USF contributions only from interstate telecommunications carriers – prohibits the Commission from extending the contribution requirement to international-only service providers. In its First USF Order, the Commission expressed no doubt that "the statute precludes [the Commission] from assessing contributions on the revenues of purely international carriers providing service in the United States…."[5] Legislative history also shows a clear congressional intent to limit the USF contribution to interstate service providers, and not extend it to international service providers, because the Senate considered and did not adopt an amendment that would have explicitly added the language "foreign communications" to the contribution mechanism.[6] Furthermore, the Fifth Circuit implicitly agreed with a plain-language reading of

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definitions as applicable to 254(d). *See In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, at para. 778 (1997) ("*First USF Order*").

[4] *See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984) (agency rules must give effect to clearly stated language by Congress).

[5] *First USF Order* at para. 779 (also stating "…we agree with PanAmSat that by definition, foreign or international telecommunications are not 'interstate' because they are not carried between states, territories, or possessions of the United States…"). *See also id.* at para. 770 ("We find that carriers that provide only international telecommunications are not required to contribute to universal support mechanisms because they are not 'telecommunications carriers that provide interstate telecommunications service.'").

[6] *See* 141 Cong. Rec. S8273 (daily ed. June 13, 1995) (Amendment No. 1300 introduced by Senator Stevens).

FCC's authority to assess contributions on interstate providers only in a USF ruling that presupposes the fact that the Commission cannot collect on international services alone.[7]

The Commission's subsequent interpretation of "interstate" in other parts of its rules as drawing "jurisdictional" lines between the authority of the Commission in contrast to that of the states (and thus allowing the inclusion of international service within the definition of "interstate") is irrelevant in light of the fact that service providers, the Courts, Congress, and even the Commission itself have failed to recognize such an argument in reference to the USF contribution mechanism in the fifteen years since the Commission's otherwise highly-contested *First USF Order*.[8] Surely this unprecedented agreement on the matter indicates the validity of the Commission's original interpretation that extending the USF contribution mechanism to international-only service providers would exceed its authority.

B. <u>The Commission Lacks Authority to Eliminate the LIRE</u>

Given that the Commission unquestionably lacks legal authority to assess international-only service providers for USF contributions, it necessarily follows that the FCC must maintain the LIRE. The FCC generally assesses USF contributions based on combined international and

[7] *Texas Office of Public Utility Counsel, et. al,* 183 F.3d 393, 434 (1999) ("*TOPUC"*) (finding that requiring carriers who provide interstate and international services to contribute more in USF contributions than they collect in interstate revenues is inequitable even before coming to the conclusion that the assessment was discriminatory as compared to other international providers. This logic would not follow if the Commission had authority to collect on international services alone). The Fifth Circuit similarly refuses to read ambiguity into the grant of authority over interstate telecommunications services in Section 254(d) for the purposes of allowing the FCC to assess contributions based on combined interstate and *intrastate* revenues. *See id.* at 476-478.

[8] Furthermore, the exemption of international service providers from USF contributions does not put them at a competitive advantage, because they are charged pass-through USF fees by their underlying providers.

interstate revenue.[9] This rule in absence of the LIRE produces the absurd result that contributors with a very small proportion of interstate revenues as compared to international revenues would have to remit USF contribution amounts that exceed the interstate revenues[10] which are the statutory basis for their contribution.[11] Both statutory and judicial authority demand that the FCC avoid this result for these mostly-international (i.e., LIRE-qualifying) service providers.

Elimination of the LIRE would violate Section 254(d) of the Act. Congress in Section 254(d) dictates that the FCC must assess USF contributions "on an equitable and nondiscriminatory basis."[12] By assessing USF contributions based on combined interstate and international service revenues without the LIRE in place, the Commission would violate this clear mandate by treating LIRE-qualifying providers very differently from international-only services, who need not remit contributions at all. LIRE-qualifying providers would also be treated very differently from interstate-only service providers, because LIRE-qualifying providers would in effect be assessed a total of 100% (or more) of their interstate revenues, while interstate-only providers are limited to the USF contribution rate.

Federal case law also demands that the LIRE be maintained. After the Commission's original implementation of Section 254(d), Comsat, "a small interstate carrier specializing in providing international telephone service", challenged the FCC's decision to include international revenues in calculating the contribution of an interstate provider even when interstate revenues were such a small portion of total revenues that the resulting USF

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[9] *First USF Order* at para. 195.

[10] *Id.* at para. 196.

[11] *See supra* at 2-4.

[12] *See* 47 U.S.C. § 254(d).

contribution would exceed the total amount of interstate revenues.[13] Comsat argued, and the Fifth Circuit agreed, that this result violates the "equitable and nondiscriminatory" language in Section 254(d) because it puts those providers at a grave disadvantage as compared to international-only service providers, who need not remit contributions at all.[14] The court also noted that this result is inequitable, because it would cause some providers to pay more in USF contributions than they are able to collect in interstate revenues.[15] Notably, the Commission created the LIRE in response to the *TOPUC* decision, in order to avoid these inequities, which are no less relevant today than they were fifteen years ago.[16] So long as the Commission continues to base USF contributions on the combined interstate and international revenues, the *TOPUC* ruling requires that LIRE qualifying providers be exempted from such a rule. Indeed, were the FCC to attempt to eliminate the LIRE, it would surely be overturned again.

C. <u>Elimination of the LIRE or the International-Only Exemptions Would Run Counter to Section 254(b)'s Requirement that Federal USF Mechanisms be Predictable</u>

Any material modification to the LIRE or international-only service exemption (or worse, their outright elimination) would be contrary to Section 254(b) and the interests of the USF because of the regulatory instability and market disruption that it would necessarily cause. Congress clearly recognized this, as a need for stability in the USF rules is written plainly into

[13] *TOPUC* at 434-35.

[14] *Id.*

[15] *See id.*

[16] *See Federal-State Joint Board on Universal Service, Access Charge Reform,* Eighth Report & Order, 15 FCC Rcd 1679, 1687-1689 (1999). Logical also agrees with the FCC's determination that for providers who exceed the LIRE qualifying threshold of interstate revenues as compared to international ones, that "their interstate telecommunications services are not merely ancillary to their provision of international telecommunications services." *See id*.

Section 254(b), which requires that "[t]here should be specific, *predictable* and sufficient Federal and State mechanisms to preserve and advance universal service."[17] For example, the FCC has been especially wary of adding regulatory fee obligations when it may threaten the viability of a service,[18] or where it may cause disruption in an evolving market segment.[19] Eliminating the international-only exemption and/or the LIRE could abruptly render a wide range of prepaid and other telecommunications business models, for example, unfeasible. Such a result would be contradictory to the goal of predictability as expressly set forth in Section 254(b). In fact, it is difficult to imagine a scenario more likely to maximize unpredictability in at least the Federal USF mechanisms than to change mid-stream core contribution exemptions after pro-consumer business models (such as the prepaid services industry) have evolved in reliance on these exemptions.

Instability in FCC rules and policies is detrimental to consumers, as well. Because USF contributions are passed through to customers, extending USF requirements to international services will cause an increase in the low rates which have benefitted these consumers. This is a particularly undesirable result, as the international-calling customers who benefit from the most from LIRE (and the international-only exemption) tend to be the U.S. low-income immigrant population (i.e., those least able to afford rate hikes), and exactly the type of population that the USF exists to protect. The FCC has expressed a desire to avoid such "rate shock" in the past, as

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[17] 47 U.S.C. § 254(b)(5) (emphasis added).

[18] *See, e.g., Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151, at n.18 (2001).

[19] *See, e.g., Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, Order, 3 FCC Rcd 2631, 2633 (1988).

a measure of consumer protection.[20] Thus, the Commission should maintain its policy of exempting these international-only and LIRE-qualifying providers from USF contributions in order, among other things, to preserve the availability of low-cost international services for consumers.

II. REVENUE REPORTING REQUIREMENTS FOR PREPAID CALLING CARD PROVIDERS SHOULD BE CLARIFIED

Logical agrees with the *FNPRM* that revenue reporting requirements as they apply to PCCPs must be clarified.[21] Logical's recommendations with respect to the PCCP issues on which the FNPRM seeks comment are set forth below.

A. Revenue Reporting Should be Based on Revenues Actually Collected by PCCPs

The current USF reporting regime as it applies to PCCPs is flawed, and has been for far too long. Specifically, the 2012 Telecommunications Reporting Worksheet Instructions require carriers to report as telecommunications revenue the amount the customer paid for the calling card, whereas the FCC Form 499-A itself requires carriers to report the face value of the card as revenue.[22] This creates confusion for PCCPs attempting to comply with the reporting requirements, because these two methods may produce conflicting results. As shown below, Logical agrees with the *FNPRM* that requiring a PCCP to report revenue actually collected from

[20] *See, e.g.*, FCC Consumer & Government Affairs Bureau, White Paper on Bill Shock (2010); *Federal-State Joint Board on Universal Service*, Ninth Report & Order, 14 FCC Rcd at 20478 (1999); *Unbundled Access to Network Elements*, WC 04-313, CC 01-338, para. 198, 228.

[21] *See FNRPM* at para. 180.

[22] *Compare* 2012 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A), at 17-18 ("FCC Form 499-A Instructions") *with* 2012 Telecommunications Reporting Worksheet, FCC Form 499-A, Line 411.

the entity it sells directly to would make it simpler for PCCPs to report accurate revenue.[23] Furthermore, the current method of calculating revenue based on the retail price of the card unlawfully discriminates against PCCPs.

1. PCCPs Should Only Report Revenues Actually Collected

A straightforward solution to the problems outlined above is requiring PCCPs to report contributions based on actual amounts collected from the entity that the PCCP sells directly to, consistent with the current policies for revenue attribution. The Commission's rules state that USF revenues will be based on "contributors' projected *collected* interstate and international revenues derived from domestic *end users*."[24] The FCC Form 499-A Instructions recognize two categories of revenues: 1) revenues attributable to telecommunications resellers,[25] and 2) revenues attributable to everything else, which are treated as "end user" revenues.[26] The Commission notes that together, these revenues will represent "all revenues on the filers' books of account."[27] In the case of PCCPs, the Commission should expressly clarify that the distributors and retailers to which PCCPs sell calling cards are treated as end-users according to the FCC Form 499-A Instructions because they are not telecommunications providers. Thus, PCCPs would generally report revenue collected from the entity to which it sells directly as end user revenue (such as revenue directly collected from a distributor).

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[23] *FNPRM* at para. 185.

[24] 47 C.F.R. § 54.709(a)(1) (emphasis added).

[25] Telecommunications resellers are not end users, therefore revenues attributable to sales to resellers are not included in the USF assessment. *See* FCC Form 499-A Instructions at 21-22. Resellers are separately subject to USF as telecommunications providers.

[26] FCC Form 499-A Instructions at 21.

[27] *Id*.

This method would also be preferable because it would make USF reporting consistent with actual PCCP methods of accounting. The FCC Form 499-A Instructions inform filers to use information from their books of account whenever possible.[28] However, current USF revenue reporting requirements make PCCPs account for transactions with retail customers with which they never have a financial relationship.[29] Of course, no provider would be able to place revenues on its books that it never collected or will ever collect – this would violate standard accounting practices. Therefore, the current rules for calculating revenues unreasonably expect PCCPs to develop a separate, artificial method of accounting just for USF purposes. A modification to the USF rules requiring PCCPs to report only revenues collected from end users, on the other hand, would avoid placing this additional burden on PCCPs.

This solution is easy to administer because it reflects the accounting methods used by PCCPs, provides for attribution of all revenue collected by telecommunications service providers, and eliminates the need for potentially complex and specific instructions about how to report calling-card revenues that further complicate reporting because they may not apply in every situation. As explained *infra* at 10-12, this solution also furthers the goal of fairness in USF policies by eliminating the current discriminatory treatment of PCCPs by the USF reporting requirements.

2. Assessing Contributions Based on Calling Card Face Value is Discriminatory

The current requirement of assessing USF contributions to PCCPs based on the face value of the card, or other measure of the retail price of the card when the PCCP is not the

[28] *See* FCC Form 499-A Instructions at 23.

[29] *See FNPRM* at para. 181.

retailer, unlawfully discriminates against prepaid providers.[30] As noted *supra* at 9, USF contributions are generally calculated based on revenues collected from all end-users which, together with revenues collected from telecommunications resellers, constitute a total of all revenues on the provider's books.[31] In the case of PCCPs, however, the Commission unfairly ascribes to the PCCP revenues that may not ever be on the PCCP's books by assuming that a price labeled on the calling card is the price paid by the final customer, and that this is revenue that will be collected by the PCCP.

No other telecommunications provider is required to remit USF contributions based on revenues that were never collected by the provider, much less based on revenues that were actually collected by an end user that is not a telecommunications service provider.[32] By assessing USF based on the "face value" of a calling card or based on any other estimated measurement of the price paid by a retail customer that has no sales relationship with the PCCP, the Commission unfairly assesses USF contributions based on fictional, higher revenues than the actual revenues collected by the PCCP.[33] In so doing, the Commission puts PCCPs at a competitive disadvantage as a result of this disparate treatment as compared to other types of providers, in direct violation of the Section 254(d)'s mandate to assess USF contributions equitably and without discrimination.

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[30] USF contributions must be assessed on an equitable and nondiscriminatory basis. *See* 47 U.S.C. § 254(d).

[31] FCC Form 499-A Instructions at 21.

[32] In fact, the Commission even generally allows providers to deduct projected uncollectibles from their total revenues, consistent with generally accepted accounting principles (GAAP). FCC Form 499-A Instructions at 25.

[33] This situation is not comparable to payphone providers' payments to premise owners. *See* FCC Form 499-A Instructions at 16. PCCPs do not make payments to retailers. Logical is not suggesting that PCCPs be allowed to take a *deduction* from gross revenues, but is instead suggesting that it is unfair to impute upon PCCPs revenues that were never paid to them at all.

Accordingly, the Commission should modify the FCC Form 499-A and FCC Form 499-A Instructions to a) make them consistent with the revenue reporting rules that other telecommunications providers follow; and b) expressly clarify that PCCPs should report those revenues actually collected, as opposed to the "face value" of the card.

B. A Value Added Approach Associated with the Prepaid Service Value Chain Should Not be Adopted

Logical opposes the use of a "value added" approach to assessing revenues as applied to the prepaid calling marketplace.[34] The prepaid calling card service value chain includes non-telecommunications wholesalers, distributors and, especially, retail stores that are typically very small businesses wholly unfamiliar with, and lacking the resources to comply with, complex USF reporting obligations.[35] As the *FNPRM* explains, under such an approach, each provider in the service value chain (including provider wholesalers, distributors, and retailers) would contribute based on the value the provider adds to the service.[36]

A "value added" approach as applied to the prepaid industry is both unnecessary and unduly complicated. First, such an approach would necessarily require any intermediate distributor or retailer to report and make contributions, including many businesses that would be contributing to the USF for the first time because they are not currently considered

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[34] *FNPRM* at para. 192.

[35] Indeed, even large, well-established service providers struggle with the challenge of accurately reporting USF revenue. *See, e.g.*, Request for Review of AT&T Inc. of Decision of the Universal Service Administrator, CC Docket No. 96-45 (filed Oct. 10, 2006).

[36] *FNPRM* at para. 192.

telecommunications providers.[37] Attempting to extend these obligations to the service value chain would impose an enormous and likely unmanageable burden on these small businesses.[38]

Second, such an approach would result in an unduly complex chain of providers and distributors. Under such an approach, it would not be uncommon for the service value chain to extend through at least three entities, including the wholesaler, distributor, and retail seller. Levels of the chain above the retail seller would be required to comply with a potentially complex and cumbersome USF exemption process.

Third, a value added approach as applied to the prepaid calling card service value chain would inevitably entangle the Commission's limited resources in an enforcement nightmare. Under such an approach, limited FCC Enforcement Bureau resources would be have to be dedicated to the burdensome task of enforcing the FCC Form 499-A registration and filing obligations[39] as they would apply to potentially thousands of small retail stores across the nation.[40]

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[37] *Id*.

[38] In many cases, small retail stores would be required to file FCC Forms 499-A and register with the FCC as service providers (and would be subject to myriad potential FCC and state telecommunications regulatory obligations).

[39] As telecommunications providers filing FCC Forms 499-A, these retails shops may also be required to comply with the FCC's Customer Proprietary Network Information rules, Communications Assistance for Law Enforcement Act requirements, remit regulatory fees, and comply with numerous other FCC obligations.

[40] The existing USF contributor model has proven complex and resulted in many disputes before the Commission. *See, e.g.*, *Universal Service Contribution Methodology; Request for Review of Decision of the Universal Service Administrator by Network Enhanced Telecom, LLP*, WC Docket No. 06-122, Order, 25 FCC Rcd 14533 (Wireline Comp. Bur. 2010); *Universal Service Contribution Methodology; Request for Review of the Decision of the Universal Service Administrator and Emergency Petition for Stay by U.S. TelePacific Corp. d/b/a TelePacific Communications*, WC Docket No. 06-122, Order, DA 10-752 (Wireline Comp. Bur., rel. Apr. 30, 2010).

Finally, such an approach is simply unnecessary in view of the fact that a much simpler alternative exists—requiring PCCPs to report amounts collected only from the entity to which the provider directly sells the prepaid cards.

C. <u>A Mark Up Approach Should Not Entail More than a 35% Mark Up</u>

As detailed *supra* at 10-12, Logical believes that any USF reporting method that attempts to attribute to PCCPs revenues actually collected by an entity other than the prepaid telecommunications provider is discriminatory and inequitable. One problem with the existing rules is that PCCPs that do not sell their calling cards at retail are required to ascertain and include in their revenues the retail "mark up" that is imposed and collected by a third party.[41] For PCCPs who cannot reasonably ascertain this mark up amount, the *FNPRM* proposes to provide a "safe harbor" mark up amount that would approximate the amount of the retail sale of the card.

First, as indicated above, Logical favors the simpler method of reporting revenue based on revenues actually collected from the entity that the PCCP sells directly to. Such an approach does not—and should not—include a "safe harbor" or mark up. However, to the extent that the Commission does not elect to adopt the simpler revenue reporting method supported by Logical,[42] the Company believes a PCCP should continue to have the option of providing actual mark up amounts in lieu of a "safe harbor" mark up.

Should the Commission adopt a "safe harbor" markup, Logical agrees that at most a 35% "safe harbor" mark up on the amount collected by the PCCP would be a justifiable and

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[41] *FNPRM* at para. 189. The "mark up" is the profit that the retailer makes above the price the retailer bought the card for.

[42] *See supra* at 9-10.

reasonable proxy for determining the price paid for the card by a retail customer.[43] In Logical's experience, this amount relatively approximates the typical retail mark up for a prepaid calling card. A higher mark up would not be consistent with marketplace reality.[44] Also, as the *FNPRM* points out, the Internal Revenue Service historically used a 35% markup to calculate and report PCCP revenues for excise tax purposes.[45]

The *FNPRM* suggests that a higher mark up "safe harbor" might encourage providers to provide actual mark up amounts. The nature of the PCCP market is not likely to produce such a result, however. As described above, once a PCCP sells a calling card to a third party distributor, the PCCP simply may not have access to information regarding subsequent sales of the card. Therefore, it would unfairly penalize PCCPs to set this mark up "safe harbor" higher than 35% .

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[43] *FNPRM* at para. 189.

[44] *See also* Letter from Pete Pattullo, Chief Executive Officer, Network Enhanced Telecom, LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, Attach. at 1-2 (filed Sept. 28, 2010) (noting that calling cards generally receive a 25%-45% mark up). If cards generally receive a 25%-45% mark up, then a 35% "safe harbor" mark up squarely in the middle of that range seems equitable.

[45] *See FNPRM* at para. 189.

III. CONCLUSION

For the aforementioned reasons, Logical respectfully requests that the Commission adopt the positions and recommendations set forth herein.

Respectfully submitted,

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